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12 *Midwest Industrial Supply, Inc.*

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UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA

SOILWORKS, LLC, an Arizona limited liability company,

Plaintiff / Counterdefendant /
Counterclaimant,

v.

MIDWEST INDUSTRIAL SUPPLY, INC.,
an Ohio corporation authorized to do
business in Arizona,

Defendant / Counterclaimant /
Counterdefendant.

NO.: 2:06-CV-2141-DGC

**MIDWEST INDUSTRIAL SUPPLY,
INC.'S RESPONSES TO SOILWORKS,
LLC'S SECOND SET OF
INTERROGATORIES AND SECOND
REQUEST FOR PRODUCTION OF
DOCUMENTS AND THINGS
ENTITLED COMBINED NON-
UNIFORM INTERROGATORIES
AND REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS TO
MIDWEST INDUSTRIAL SUPPLY,
INC.**

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 34,
Defendant Midwest Industrial Supply, Inc. (“**Defendant**” or “**Midwest**”) hereby responds to
Plaintiff Soilworks, LLC.’s (“**Plaintiff**” or “**Soilworks**”), Second Set of Interrogatories and

1 Second Request for Production of Documents and Things Entitled Combined Non-Uniform
2 Interrogatories And Request For Production Of Documents And Things.

3
4 **GENERAL OBJECTIONS**

5 1. The General Objections contained within Defendant's Answers to Plaintiff's
6 First Set of Interrogatories to Defendant, served previously, are incorporated herein by
7 reference. To the extent Plaintiff sets forth the identical Instructions and/or Definitions
8 herein as set forth by Plaintiff in its First Set of Interrogatories, such objections by Defendant
9 to those identical Instructions and/or Definitions are incorporated herein by reference as
10 well.

11 2. Defendant objects to Plaintiff's interrogatories and document requests as not
12 being consecutively numbered and labeled as "non-uniform."

13 3. Defendant objects to Plaintiff's request, as set forth herein and its instruction,
14 to the extent it exceeds the requirements of Federal Rules of Civil Procedure 26, 33 and 34.
15

16 **RESPONSE TO INTERROGATORIES**

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18 **Interrogatory No. 1 (15)**

19 Does any Soilworks product infringe US Patent No. 7081270?

20
21 **ANSWER:**

22 Defendant incorporates herein the General Objections. Defendant objects to this
23 Interrogatory to the extent that it seeks confidential and proprietary information. Defendant
24 further objects that the Interrogatory seeks information protected by the attorney-client
25 privilege and/or the work product doctrine. Defendant will produce confidential information
26 only subject to the Agreed Protective Order in this proceeding.

27 Subject to and without waiving the foregoing objections, Defendant responds:
28

1 From the available public information, yes.

2
3 **Interrogatory No. 2 (16)**

4 If your answer to the preceding interrogatory is in the affirmative, please state:

5 (a) each and every Soilworks product which you claim infringes;

6 (b) the specific reasons why you believe any infringement exists including the scope
7 of any claimed infringement, and the manner in which any of such products
8 infringe the patent.
9

10 **ANSWER:**

11 Defendant incorporates herein the General Objections. Defendant objects to this
12 Interrogatory to the extent that it seeks confidential and proprietary information. Defendant
13 further objects that the Interrogatory seeks information protected by the attorney-client
14 privilege and/or the work product doctrine. Defendant will produce confidential information
15 only subject to the Agreed Protective Order in this proceeding.
16

17 Subject to and without waiving the foregoing objections, Defendant responds:

18 (a) At least Plaintiff's Durasoil product.

19 (b) Based upon the publicly available information of Plaintiff's Durasoil product,
20 excluding any alleged "proprietary ingredients", the publicly available information
21 is included within the elements of at least one independent claim.
22
23
24

25 **Interrogatory No. 3 (17)**

26 Does any Soilworks product infringe US Patent No. 7074266?

27 **ANSWER:**
28

1 Defendant incorporates herein the General Objections. Defendant objects to this
2 Interrogatory to the extent that it seeks confidential and proprietary information. Defendant
3 further objects that the Interrogatory seeks information protected by the attorney-client
4 privilege and/or the work product doctrine. Defendant will produce confidential information
5 only subject to the Agreed Protective Order in this proceeding.
6

7 Subject to and without waiving the foregoing objections, Defendant responds:
8
9 From the available public information, yes.

10
11 **Interrogatory No. 4 (18)**

12 If your answer to the preceding interrogatory is in the affirmative, please state:

13 (a) each and every Soilworks product which you claim infringes;

14 (b) the specific reasons why you believe any infringement exists including the scope
15 of any claimed infringement, and the manner in which any of such products
16 infringe the patent.
17

18 **ANSWER:**

19 Defendant incorporates herein the General Objections. Defendant objects to this
20 Interrogatory to the extent that it seeks confidential and proprietary information. Defendant
21 further objects that the Interrogatory seeks information protected by the attorney-client
22 privilege and/or the work product doctrine. Defendant will produce confidential information
23 only subject to the Agreed Protective Order in this proceeding.
24

25 Subject to and without waiving the foregoing objections, Defendant responds:

26 (a) at least Plaintiff's Durasoil product.
27
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1 (b) based upon the publicly available information of Plaintiff's Durasoil product,
2 excluding any alleged "proprietary ingredients", the publicly available information
3 is included within the elements of at least one independent claim.
4

5
6 **Interrogatory No. 5 (19)**

7 Please state each and every fact upon which you rely in support of your allegation in
8 paragraph 13 of your counterclaims that Soilworks has used Midwest's marks in commerce.
9

10 **ANSWER:**

11 Plaintiff's advertising including, but not limited to, its brochures, website and
12 marketing materials.
13

14
15 **Interrogatory No. 6 (20)**

16 Please state each and every fact upon which you rely in support of your allegation in
17 paragraph 14 of your counterclaims that Soilworks has made false or misleading statements
18 of fact in its commercial advertisements and promotions.
19

20 **ANSWER:**

21 Defendant incorporates herein the General Objections. Defendant objects to
22 this Interrogatory to the extent that it seeks confidential and proprietary information.
23 Defendant further objects that the Interrogatory seeks information protected by the attorney-
24 client privilege and/or the work product doctrine. Defendant will produce confidential
25 information only subject to the Agreed Protective Order in this proceeding.
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1 Subject to and without waiving the foregoing objections, Defendant responds Plaintiff's
2 advertising including, but not limited to, its brochures, website and marketing materials.

3
4 **Interrogatory No. 7 (21)**

5 Please state each and every fact upon which you rely in support of your allegation in
6 paragraph 18 of your counterclaims that Soilworks has used and continued to use one or
7 more of Midwest's marks in commerce without Midwest's authorization. Please state which
8 of Midwest's marks are alleged to be used by Soilworks and how it is alleged that Soilworks
9 is using any such marks.
10

11 **ANSWER:**

12 Defendant incorporates herein the General Objections. Defendant objects to this
13 Interrogatory to the extent that it seeks confidential and proprietary information. Defendant
14 further objects that the Interrogatory seeks information protected by the attorney-client
15 privilege and/or the work product doctrine. Defendant will produce confidential information
16 only subject to the Agreed Protective Order in this proceeding.
17

18 Subject to and without waiving the foregoing objections, Defendant responds Ultra Pure,
19 Synthetic Organic Dust Control, and Oil Sheen Free.
20

21
22 **Interrogatory No. 8 (22)**

23 Please state each and every fact upon which you rely in support of your allegation in
24 paragraph 23 of your counterclaims that "Soilworks manufactures no product whatsoever."
25

26 **ANSWER:**
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1 Defendant incorporates herein the General Objections. Defendant objects to this
2 Interrogatory to the extent that it seeks confidential and proprietary information. Defendant
3 further objects that the Interrogatory seeks information protected by the attorney-client
4 privilege and/or the work product doctrine. Defendant will produce confidential information
5 only subject to the Agreed Protective Order in this proceeding.
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7 Subject to and without waiving the foregoing objections, Defendant responds Plaintiff's
8 location and knowledge of Plaintiff by Defendant's representatives.
9

10
11 **Interrogatory No. 9 (23)**

12 Please state each and every fact upon which you rely in support of your allegation in
13 paragraph 24 of your counterclaims that "Soilworks uses words and/or phrases, marketing,
14 advertising, etc., taken directly from Midwest,...".
15

16 **ANSWER:**

17 Defendant incorporates herein the General Objections. Defendant objects to this
18 Interrogatory to the extent that it seeks confidential and proprietary information. Defendant
19 further objects that the Interrogatory seeks information protected by the attorney-client
20 privilege and/or the work product doctrine. Defendant will produce confidential information
21 only subject to the Agreed Protective Order in this proceeding.
22

23 Subject to and without waiving the foregoing objections, Defendant responds
24 Plaintiff's marketing information and website.
25

26
27 **Interrogatory No. 10 (24)**
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1 Please state each and every fact upon which you rely in support of your allegation in
2 paragraph 28 of your counterclaims that Soilworks has made false or misleading statements
3 of fact in its commercial advertisements and promotions.
4

5 **ANSWER:**

6 Defendant incorporates herein the General Objections. Defendant objects to this
7 Interrogatory to the extent that it seeks confidential and proprietary information. Defendant
8 further objects that the Interrogatory seeks information protected by the attorney-client
9 privilege and/or the work product doctrine. Defendant will produce confidential information
10 only subject to the Agreed Protective Order in this proceeding.
11

12 Subject to and without waiving the foregoing objections, Defendant responds
13 pursuant to Federal Rule of Civil Procedure 33(d) that it will produce non-privileged
14 documents in response to this Interrogatory.
15

16
17 **REQUESTS FOR PRODUCTION**

18 **REQUEST FOR PRODUCTION NO. 1 (31)**

19 For each and every response to the non-uniform interrogatories set forth above, produce
20 any and all documents and sources of information in support thereof.
21

22 **RESPONSE:**

23 Defendant incorporates herein the General Objections. Defendant objects to this
24 request to the extent that it seeks confidential and proprietary information. Defendant further
25 objects that the Interrogatory seeks information protected by the attorney-client privilege
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1 and/or the work product doctrine. Defendant will produce confidential information only
2 subject to the Agreed Protective Order in this proceeding.

3
4 Subject to and without waiving any of the foregoing or any General Objection,
5 Defendant will make available for inspection and copying any and all documents not subject
6 to the attorney-client privilege or attorney work product doctrine in his possession pursuant
7 only to the Agreed Protective Order entered in this case.
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11 Dated this 31st day of December, 2007.

12 **BROUSE MCDOWELL LPA**

13 By /s/ John M. Skeriotis

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22 *Attorneys for Defendant*

23 *Midwest Industrial Supply, Inc.*
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